Supreme Court of the United States

October Term, 1945, No. 62.

THE EAST NEW YORK SAVINGS BANK,

Appellant,

against

ALVIN HAHN and HANNAH HAHN,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK

BRIEF OF THE STATE OF NEW YORK
as *Amicus Curiae*

September 27, 1945.

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Statement

The appellant has appealed to this Court pursuant to U. S. Code, tit. 28, § 344 (a), from a final judgment of the Supreme Court of the State of New York, County of Kings, dated February 26, 1945, and entered upon a remittitur from the Court of Appeals of the State of New York, in an action for the foreclosure of a mortgage. Appellant (plaintiff in the foreclosure action) challenged the validity of the New York Mortgage Moratorium Law as extended in 1943 (L. 1943, c. 93), under the contract clause (Art. I, § 10) and the due process clause of the Fourteenth Amendment, of the Federal Constitution.

* The Attorney General appears not only as *amicus,* but as a statutory party pursuant to the direction of the Chief Judge of the Court of Appeals under New York Executive Law § 68 (L. 1913, c. 442). Under that statute it is the Attorney General's duty to appear in support of the constitutionality of State Laws when directed by a court of record of the State.

The trial court dismissed the complaint at the close of the plaintiff's case and sustained the constitutionality of the statute (R. 162-165). The opinion of the trial justice is reported in 182 Misc. 863, 51 N. Y. S. (2d) 496 (1944).

On a direct appeal to the Court of Appeals pursuant to New York Civil Practice Act § 588(4), the judgment of the trial court was affirmed (R. 168-172; reported in 293 N. Y. 622, 59 N. E. (2d) 625 [1944]).

Plaintiff appealed to this Court as a matter of right. Statements supporting and opposing jurisdiction, including a motion to dismiss or affirm, were duly filed. On May 21, 1945, this Court noted probable jurisdiction (R. 188).

Facts

1. *Nature of the Litigation.*

This action was instituted to foreclose a mortgage on real property. The original amount of the mortgage was $5,000, but at the time of the commencement of the action the principal sum due had been reduced to $4,912.50 (R. 34). Admittedly all interest, taxes, insurance and amortization payments required under existing moratorium statutes have been paid by the defendants and the only default is in the unpaid principal amount previously mentioned (App. Br. p. 2).* It is also conceded that if there be a valid mortgage moratorium in the State, the mortgage in question is covered by its provisions (*ibid.*).

Appellant contests the validity of the New York Moratorium Law (L. 1943, c. 93) in existence at the time of the commencement of the action on March 27, 1944, on the ground that the emergency which justified the original enactment of the statute in 1933 (L. 1933, c. 793) has ceased

* Assuming that defendants have paid statutory amortization since the date of trial, the amount of the principal will have been reduced by October 1, 1945 to $4,762.50.

to exist, and that the 1943 law therefore works an unconstitutional impairment of the obligation of the appellant's contract with the defendants and deprives it of property without due process of law (App. Br. pp. 2, 3).

2. *The Statute Involved.*

The statute under attack is chapter 93 of the Laws of 1943. Section 1 of the act contains the legislative declaration of the existence of an emergency and reads in part as follows:

> "The serious public emergency, which existed at the time of the enactment of sections ten hundred and seventy-seven-a, * * * of the civil practice act, as added by chapter seven hundred and ninety-three of the laws of nineteen hundred thirty-three, * * * having continued, in the judgment of the legislature, to the present time and still existing, the provisions of such chapters * * * shall * * * remain and be in full force and effect until July first, nineteen hundred forty-four, * * *"

The 1933 and 1943 acts are set forth in full in the appendix to appellant's brief (pp. 53-61).

Briefly the 1943 statute continues to ban all actions for the foreclosure of mortgages executed before July 1, 1932, for principal defaults, on condition that the owner pay the unpaid principal amount at the rate of 1% per annum.* In other words, so long as interest, taxes, insurance and the amortization provided for by the act are paid, the mortgaged property may not be foreclosed.**

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*The requirement for amortization was increased to 2% by chapter 562 of the Laws of 1944 and to 3% by chapter 378 of the Laws of 1945, each of these laws extending the moratorium for an additional year.

**If the mortgage so provides, as the one in suit does (Pl. Ex. 2, printed at R. 132, offered at R. 33), the mortgage may also be foreclosed for the owner's failure to keep the buildings on the mortgaged property in reasonably good repair. See *Mills Land Corp.* v. *Halstead*, 184 Misc. 679, 56 N. Y. S. (2d) 862 (1945).

The mortgagee has the right, moreover, except in the case of properties used for farming purposes, or of dwellings occupied by the owner or by the owner in conjunction with not more than one other family, to apply to the court for an order that any surplus income be applied toward the reduction of any past due principal (N. Y. C. P. A. § 1077-c). Failure by the mortgagor to make available records and data as to receipts and disbursements or to pay the amount directed by the Court under the provisions of the applicable section, operates to remove the foreclosure restriction.

The history and background of the legislation is set forth in more detail under sub-head 4, *infra*, pp. 7-14.

3. *The Testimony at the Trial.*

In attempting to show that no public emergency existed which justified the continuance of the Moratorium Law, appellant called four witnesses—two statisticians and two real estate men—and, in addition, introduced in evidence a number of statistical exhibits.

The substance of the testimony of the real estate men was that there was an improved condition in the real estate market in 1943 and that mortgage money was available where the underlying security was sound, provided location, tenancy and character of building were satisfactory (R. 68-69, 70-71, 103, 104).

One of these witnesses, Charles Punia, a real estate broker, based his opinions solely upon his personal experience (R. 76). The disregard of adverse factors by this witness may be judged from his testimony that in his opinion there had always been a good mortgage loan market from 1934 on,—which might indicate there never was a need of a moratorium. With such a view not even the appellant is now in accord (App. Br. p. 30).

The activities of the second real estate expert were confined primarily to the Borough of Queens (R. 104)—

the property in suit lying in the Borough of Brooklyn. He testified that the real estate market was active in 1943, and that mortgage money was readily available, provided the security was good (R. 103, 104, 108). He attributed a large part of the improvement and activity in the real estate and mortgage market to new construction in Queens County commencing around 1937, which enabled lending institutions to place their money. But obviously a good market for newly constructed homes is no criterion concerning conditions affecting moratorium mortgages, all of which were placed prior to 1932 and cover older properties. As far as mortgage defaults are concerned, he admitted that there were more foreclosures in 1942 and 1943 than there had been in 1934 (R. 99-100, 141).

Moreover the Federal Housing Administration, created under the National Housing Act (12 U. S. C. § 1701 *et seq.*), played an important part in creating better market conditions by guaranteeing loans made on new residences (*id.* § 1709; and see R. 111). There was no authority under the Act to insure mortgages on any properties which were constructed prior to February 3, 1938, and consequently the refinancing of older properties, which were the primary subject of protection under the moratorium law, was impossible under the National Housing Act.

One of the statistical exhibits produced by the plaintiff (Pl. Ex. 6, printed at R. 141, offered at R. 86) shows that in Brooklyn, Queens and Nassau there had been sales of real property by member banks of Group V, Mortgage Information Bureau, which in number and dollar amount exceeded foreclosures conducted by the same institutions. Even these figures, however, still show substantial foreclosures as late as 1943, the so-called "peak year" of real estate activity to which one of appellant's witnesses testified (R. 106). Moreover, these bare statistics are mean-

ingless without a showing of how the sales compared with the fair or assessed value of the properties involved, or what number of them represented moratorium protected properties. As we shall later show, the percentage of total consideration from sales in New York City as compared with assessed valuations gradually decreased from 1939 to 1943, in spite of the fact that total tax assessments in the same period had declined. It is also noteworthy that during the first ten months of 1943 savings banks in New York State reduced to possession mortgaged property amounting to $60,348,000, whereas during the same period their total sales aggregated only $56,821,000. (See 1943 Report of New York State Superintendent of Banks, 1944 Leg. Doc. No. 21, p. 28).

The statisticians who testified for the appellant quoted figures indicating generally an improvement in business conditions, in employment and in wages. There was testimony as to an increase in bank deposits (R. 38-40), in the amount of currency in circulation (R. 40-41), and in the sale of war bonds (R. 41-42).

It was testified that in order to reach the legally permissive maximum limit for mortgage investment, savings banks could invest $1,100,000,000 in mortgages within the State (R. 49). However, the witnesses did not explain how the desire of the savings banks to increase their mortgage portfolios could be aided by a decision granting the right to foreclose mortgages which—like the one in suit—were paying 6% interest plus regular amortization of principal.

The Court was also requested by plaintiff's counsel to take judicial notice of Presidential and Congressional emergency measures (R. 113-121), most of which bore little or no relation to the question whether the New York State Legislature had reasonable justification for the enactment of the challenged statute.

On the trial of the action the attorney for the defendants called no witnesses, but in cross-examining the appellant's witnesses he elicited facts and figures which tended to refute many of appellant's claims. The Attorney General took no part in the trial. Although the People of the State of New York were named as defendants in the summons (R. 4), the complaint recited that they were made a party only because of their possible lien for transfer taxes on the estate of a former owner of the property (R. 9), which was revealed as a junior lien when the complaint was amended (R. 15) to set forth the facts required by statute (N. Y. C. P. A. § 259).

When the case reached the Court of Appeals, the Attorney General, at the invitation of the Chief Judge pursuant to New York Executive Law § 68, filed a brief in support of the constitutionality of the statute. In that brief the Attorney General set forth facts contained in reports of Joint Legislative Committees on Moratorium Legislation and in other official documents, and referred to other data in the field of judicial notice supporting the finding of the existence of an emergency.

It consequently may not be said that appellant's evidence was undisputed (App. Br. p. 2).

4. *Legislative History of the New York Mortgage Moratorium Statute.*

a. The Origin of the Moratorium Law.

The original mortgage moratorium statute in New York State was enacted in 1933 (L. 1933, c. 793). In substance, the act suspended mortgage foreclosure actions, as well as actions on the bond, for all defaults in the payment of principal on mortgages executed prior to July 1, 1932. The Legislature at that time declared the existence of a public emergency in the following words:

"Section 1. It is hereby declared that a serious public emergency, affecting and threatening the wel-

fare, comfort and safety of the people of the state and resulting from the abnormal disruption in economic and financial processes, the abnormal credit and currency situation in the state and nation, the abnormal deflation of real property values and the curtailment of incomes by unemployment and other adverse conditions, exists. Therefore, in the public interest, the necessity for legislative intervention by the enactment of the provisions hereinafter prescribed, and their application until July first, nineteen hundred thirty-four, is hereby declared as a matter of legislative determination."

The constitutionality of the 1933 law was upheld by the Court of Appeals in *Klinke* v. *Samuels*, 264 N. Y. 144, 190 N. E. 324 (1934). Appellant does not dispute the existence of an emergency at that time "which justified the passage of the law and the temporary suspension of the contractual rights of mortgagees" (App. Br. p. 30).

In each of the eleven succeeding years (except 1942, the 1941 extension having been for two years) the Legislature declared that the provisions of the 1933 statute should remain in force for another year. The 1941 statute (L. 1941, c. 782) also provided for amortization of principal at the rate of 1% per annum from July 1, 1942 on. As already noted, the 1944 statute (L. 1944, c. 562) increased the rate of amortization to 2% and the 1945 law (L. 1945, c. 378) provided for a further increase to 3%.

In connection with the 1938 extension, the Legislature had before it a report of a joint legislative committee, appointed pursuant to a resolution of the State Legislature in 1937. This committee, known as the "Nunan Committee," made an exhaustive study of the mortgage field, held numerous public hearings and assembled volumes of statistical and other data. The report of the Nunan Committee, which found that an emergency still existed in the real estate and mortgage field requiring the continuance of the moratorium legislation, is embodied in Legis-

lative Document No. 58 for the year 1938. The Court of Appeals of the State, by its 1938 decision sustaining the constitutionality of the previous extensions of the Moratorium Law in *Maguire & Co.* v. *Lent & Lent*, 277 N. Y. 694, 14 N. E. (2d) 629 (1938), may, in effect, be said to have concurred in the findings of the Nunan Committee.

Again in 1941, the Legislature, by a further joint resolution, created a committee to study the conditions in the mortgage field. This committee was known as the "Janes Committee" and it rendered its report on February 24, 1942 (1942 Legislative Document No. 45).* This report preceded the 1943 legislation here challenged, and the parties agree that it should be considered by the Court as part of the record in this case (see App. Br. p. 5). Because of the importance of the Janes Committee report to the issue involved, we undertake a somewhat detailed analysis of its contents.

b. The Janes Committee Report.

The report of the Janes Committee comprises seventy-nine pages and, in addition to the Committee's findings and recommendations, contains an abundance of facts and statistics showing the existence of an emergency in the New York mortgage field. The Committee sought and obtained information concerning employment, payrolls, earnings, business activity and cost of living. It obtained reports pertaining to real estate conditions. It held public hearings in various sections of the State. One of the valuable sources of its information as regards mortgages was based on questionnaires which it had prepared and sent to all State banks, trust companies, savings and loan associations, savings banks and insurance companies within the State. **(Report, pp. 9-10).**

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* Copies of the 1942 legislative committee report will be submitted to the Court at the argument.

The institutions which answered the questionnaires reported that on August 26, 1941, moratorium mortgages held by them totalled 552,000 with a total principal amount of $3,154,751,258, as compared with a total of 658,377 mortgages in the aggregate principal amount of $5,093,578,562.84 held by the same institutions August 26, 1933 (*id.* p. 15).

The quoted figures, it was pointed out, did not include the holdings of all lending institutions nor privately owned mortgages nor those held in a fiduciary capacity. The Committee estimated, on the basis of the data before it, that there were still close to four billion dollars of moratorium mortgages outstanding in New York State (*id.* p. 15).

After referring to the economic emergency which called forth the original enactment, the Committee stated (*id.* p. 16):

> "Careful consideration should likewise be given to the effect of the repeal or sudden termination of the moratorium legislation. Care must be taken lest ill-considered action precipitate an emergency as great as that which the legislation was originally intended to alleviate."

The Committee was, of course, aware that there had been an economic improvement over 1933. It emphasized, however, that less than one-tenth of the population of the State and less than one-sixth of its wage earners had benefited directly by improvement in employment and factory wages (*id.* p. 19). The report continued (*id.* pp. 19-20):

> "On the other hand, many thousands of persons who are employed on a fixed salary such as teachers, Federal, state, and local government employees, clerical employees, and similar groups, will receive no direct benefit from the increase in factory employment. Persons who have retired and those dependent upon pensions and annuities will receive no bene-

fits, nor will to any extent the professional groups. Priority rulings and inability to get certain essential materials threaten to force many small manufacturing enterprises unable to handle government contracts, to close or greatly curtail their activities. Decreased income or unemployment may result in the case of such employees as cannot be absorbed in the defense program."

The report then noted the marked increase in living costs affecting "both those who have benefited by the defense program and those who have not" (*id.* p. 20). A significant feature pointed out by the Committee was that the only item of decrease in living costs in New York City between 1933 and 1941 was rent, which had decreased 3.5% at a time when real estate taxes had risen over 16% (*ibid.*).

Turning to a discussion of the increased tax burden, the Committee estimated that the "American taxpayer is paying 24 per cent of his income toward all forms of taxation including state, local and Federal" (*id.* p. 22). The conclusion drawn was (*ibid.*):

"that the increase in living costs and the increased tax burden which must be faced for some time to come, have to a major extent offset increased earnings due to improved business conditions."

On the subject of real estate, the Committee reported (*id.* p. 22):

"There still is much distressed real estate. The Real Estate Board of New York, Inc., reported to the committee that its investigation showed that on open market sales of real property in New York City in 1937, the average price received by the vendor was only 82.9 per cent of the assessed value of the property. In 1938 the average realized price dropped to 79.5 per cent of the assessed value. In 1939 it dropped to 75.5 per cent and in 1940 to 72.6 per cent."

The report continued (*ibid.*):

> "One of the Brooklyn banks reports to the committee that in its opinion the emergency still exists, that the defense program has not improved the financial condition of the houseowner, and that in many instances he is in a worse position as a result of increased living costs."

Attention was also called to the fact that of 80,116 loans made by the Home Owners Loan Corporation, 31,829 properties covered by these loans have been repossessed and an additional 5,000 loans were more than three months in default. Slightly less than one-half of the repossessed properties have been sold, resulting in a loss of 39.4 per cent of the ledger value of the property (*id.* p. 23).

From the answers furnished by the lending institutions to the Committee's questionnaires, it appeared that there were 34,667 mortgages in total principal amount of $537,553,361 where the owner, it was felt, was unable to pay any amortization (*id.* p. 38). Many of these owners, it was stated, no doubt have substantial equities in their property and are entitled to the continued protection of the Moratorium Law (*id.* p. 39).

The Committee then made this significant declaration (*id.* p. 25):

> "Any sudden liquidation or attempted liquidation of any substantial number of the mortgages now within the protection of the moratorium would tend to generally demoralize the real estate market and result in substantial loss not only to the property owners but to depositors, beneficiaries, and others whose rights are derived from the mortgages."

And further (*ibid.*):

> "The sudden termination of the legislation which has dammed up normal liquidation of these mortgages

> for more than eight years might well result in an emergency more acute than that which the original legislation was intended to alleviate."

On the basis of its exhaustive and thorough investigation, the Committee made a series of findings (*id.* p. 5), the most material one being Finding No. 1 which states (*ibid.*):

> "That the emergency still exists and that the sudden termination of the moratorium would of itself now create an emergency. Improved business and economic conditions resulting from the defense program and the war have largely been offset by the increase in living costs and the enormous and ever-increasing tax burden. The average home owner has received no relief from the burden of real estate taxes, and, on the contrary, such taxes have increased since the first adoption of the moratorium. Any present sudden termination of the moratorium might result in a very large amount of forced liquidation of mortgage indebtedness resulting in losses alike to property owners, mortgagees, depositors, and others."

No material change was shown by the appellant in the circumstances which led to this finding in February, 1942, either up to the date of the enactment, on March 11, 1943, of the statute under attack, or up to the dates of trial of the action on May 22 and 23 of 1944.

Indeed, Governor Dewey, in his 1943 message to the Legislature, took cognizance of this finding in the James Committee report when, after referring to the origin of the moratorium legislation and stating that debts should be paid off in a period of high economic activity, he added (1943 Legislative Document No. 1, p. 9):

> "But we must recognize the existence of a new emergency. Wage ceilings, rent ceilings and taxes make it impossible for many property owners to liquidate their debts. Accordingly, I recommend continuance of the mortgage moratorium for another year."

That the Governor's recommendation, as well as that of the Janes Committee, was adopted by the Legislature is evidenced by the enactment of chapter 93 of the Laws of 1943, the act presently challenged. While the Legislature at that time declared that the emergency of 1933 had continued, the conditions creating the 1933 emergency as set forth in the enactment that year were not repeated in the 1943 statute. The Legislature, in declaring the continuance of an emergency, undoubtedly had in mind the new facts related in the Janes Committee report and this was the view of a majority of the Court of Appeals in the opinion upholding the Moratorium law (R. 171-172; also 293 N. Y. at p. 628).

c. The 1944 and 1945 Extensions of the Moratorium Law.

The Moratorium Law was extended in 1944 (L. 1944, c. 562) for an additional year, Governor Dewey at that time expressing his belief "that while the mortgage moratorium should be continued so as to avoid undue, sudden hardship, the bill should provide for reasonable payments upon the principal of these debts and require the owners to maintain the premises in good condition" (1944 Legislative Document No. 1, p. 16). The 1944 statute, as already indicated, increased the rate of amortization to 2%.

In 1945 the Legislature again found the need for continuing the Moratorium Law for an additional year (L. 1945, c. 378). The rate of amortization was then increased to 3%. Section 1 of the 1945 statute declares that the emergency existing at the time of the enactment of the applicable chapters of the 1933 statute having continued and still existing,

> "because of the large amount of real estate which would be subject to immediate foreclosure if such sections and chapters were not continued in force and effect, and such emergency having been aggravated by the

> substantial amount of foreclosed real estate still held by insurance, banking and other financial institutions, by the imposition of ceilings on rents and wages at a time when there has been a disproportionate rise in maintenance and repair costs, and by the fact that over one million of the residents of this state are serving in the armed services of the nation, the provisions of such chapters * * * shall, * * * remain and be in full force and effect until July first, nineteen hundred forty-six, * * *"

The 1945 law was enacted upon the recommendation of the Joint Legislative Committee on Mortgage and Real Estate. The Committee's recommendation was made after it had held a public hearing at which much evidence of a continued emergency was presented to it (1945 Legislative Document No. 55). Organizations representing thousands of home owners pleaded for the continuation of the Moratorium Law (Minutes of Joint Legislative Committee on Mortgage and Real Estate, February 13, 1945, S. M. pp. 2, 4, 7, 24, 46, 50, 52, 59, 64, 67, 70, 90, 92, 142 and 149). They based their pleas on the increased cost of living and burdensome taxation (*id.* pp. 5, 9); on the plight of the people on fixed salaries, annuities, and older people who did not benefit financially from the economic activity due to the war effort (*id.* pp. 13, 47, 63, 88, 142); and on the difficulties of families having men in the service (*id.* pp. 5, 9, 47, 51, 54, 95-96).

The impossibility of obtaining loans on real property in certain sections of the City and on older buildings was also urged (*id.* pp. 10-11, 54 and 66); that certain areas were excluded by banks from refinancing was admitted by Mr. Paul Albright, representing the Savings Banks Association of The State of New York (*id.* p. 124). The fact that not every good mortgage could be refinanced was suggested also on the trial of this case, when the statement of plaintiff's witness that there was a favorable market for refinancing residential mortgages was

made subject to the condition that, "the occupancy, *location,* and physical condition is such that a loan can be procured on it at all" (R. 69). (Italics ours). In other words, in spite of the claim that mortgage money was readily available, there were certain areas which could not be refinanced and where the owners, no matter how cooperative, would be unable to salvage their equities.

It was also testified that maintenance and repair costs were steadily mounting (*id.* pp. 55, 56, 63, 64 and 144) and that O. P. A. rental ceilings added to the home owner's difficulties (*id.* pp. 145, 150).

5. *Additional Facts Supporting the Legislative Finding that an Emergency Existed in 1943.*

a. Increased Wages Offset by Rising Living Costs and Heavy Tax Burden.

The testimony submitted by the appellant as to the increase in the average weekly wage (R. 43) must be considered in the light of the increased cost of living and the heavy tax burden. Appellant's own witnesses testified that the cost of living had risen about 25% over 1935 (R. 45-46). While this conceded increase is in itself substantial, we do not accept that figure as actually representing the percentage of rise in living costs. From the figures released by the War Labor Board on November 18, 1944, it appears that the overall increase in the cost of living from December 7, 1941 alone had been at least 29 to 30% (New York Times, November 19, 1944, sec. 1, p. 1, col. 1).

Moreover, it is a fact of common knowledge that the greatest wage benefits have been obtained by those engaged in manufacturing industries, particularly war industries, and that persons employed on fixed salaries have received little direct benefit from the increased employment and rising wage scale.*

* See also WALLACE, *Sixty Million Jobs* (1945), p. 48.

The plight of employees on fixed salaries may be gleaned from the fact that the State Legislature found it necessary to grant State employees a cost of living bonus ranging from 10 to 20% of the basic salary (see L. 1943, c. 187; L. 1944, c. 114; L. 1945, c. 159). Similar bonuses were granted by the City of New York to its employees (see Terms and Conditions of the Budget of the City of New York for 1944-1945, page "e", par. 4). Obviously, the predicament of persons dependent on pensions and annuities, and those white collar workers who have not been fortunate enough to be granted cost of living bonuses, is even greater. In this connection it should also be borne in mind that the Little Steel Formula, formulated in 1942, placed a limit on increase in wages of a maximum of 15% above the January 1, 1941 level. *In re Bethlehem Steel Corp. et al.*, 1 War Lab. Rep. 325 (1942).

It is also noteworthy that the Emergency Price Control Act (50 U.S.C., App. § 901 *et seq.*) has as one of its declared purposes the protection of "persons with relatively fixed and limited incomes, consumers, wage earners, investors, and persons dependent on life insurance, annuities, and pensions, from undue impairment of their standard of living; * * * which would result from abnormal increases in prices; * * *." This is a plain indication of the Congressional awareness of the financial difficulties of this large segment of our population.

The plight of the low-income group, particularly the white-collar class, is described in a speech of Representative Engel of Michigan before the House of Representatives (91 Cong. Rec. [March 19, 1945] 2476-2477), where he called attention to the recent trend of income tax policy to reduce exemptions and increase the taxes even on low-income groups. Quoting from a statement of the Treasury Department issued in 1944, Representative Engel pointed out that of approximately 67,000,000 receiving incomes against which a personal tax liability is imposed,

21,600,000 received incomes of $1,000 or less, 24,400,000 received incomes ranging from $1,000 to $2,000 and 12,200,000 received $2,000 to $3,000 per year (*ibid*).

On the subject of increased living costs the following estimates were cited (*id.* pp. 2476-2477):

> (a) The Bureau of Labor Statistics report of January 30, 1945, showing that the cost of living on December 15, 1944, had risen 27% above the 1935-1939 level.
>
> (b) The report of the research and information service of the American Federation of Labor showing an increase of 46.4% in living costs from 1939 to December 1944.
>
> (c) The estimate of the Congress of Industrial Organizations that living costs had increased 45.3% between January 1941 and March 1944.

The Legislature had some basis on which to conclude, therefore, that by reason of the increase in cost of living and the heavy tax burden, the plight of the fixed salary group was so serious in 1943 as to require statutory protection.

Nor should the vital fact be overlooked that the percentage of increase in employment was due in a very large measure to the defense program. Many of these employments may be accurately described as temporary in nature, terminating with the cessation of hostilities. In his 1945 message to the State Legislature, Governor Dewey observed that "cut-backs in war production have already created job problems for thousands" (1945 Legislative Document No. 1, p. 8). At the same time the Governor also stated (*ibid.*):

> "After final victory in the war has been won, no problem confronting the people of our State will be more urgent than full production and full employment. More than 1,200,000 of our young men and women are serving their country in uniform and 2,000,000 of our

men and women are engaged in war production. Peacetime employment will constitute a challenge to business and to the government of the State."

The problems envisaged by the Governor are now surely coming to pass. Wholesale shut-down of factories and lay-offs came quickly on the heels of the Japanese surrender. On the day following the capitulation of Japan, John W. Snyder, Director of War Mobilization, stated that the unemployment total is currently at 1,100,000 and that the total is "expected to rise to 5,000,000 or more within three months; perhaps to 8,000,000 before next spring as those released from war jobs are joined by large numbers of men discharged from the armed services." (Report dated August 15, 1945, from John W. Snyder, Director of War Mobilization and Reconversion, to the President, entitled "From War to Peace: A Challenge," as reported in the New York Times, August 16, 1945, p. 12). That this prophesy had considerable validity appears from the fact that within ten days after the surrender of Japan the War Man Power Commission estimated that 2,000,000 men were displaced from their jobs. New York was among the areas hit hardest by the displacements (New York Times, August 30, 1945, p. 13, col. 3). All this plainly shows the temporary character of the economic improvement upon which appellant relies to overthrow the moratorium legislation. We cannot, of course, prophesy the speed with, or the extent to which the reconversion program will absorb the great numbers whose jobs have terminated or will terminate as a result of the cessation of hostilities.

Appellant points to the manpower controls established in 1942 as indicative of the complete reversal of employment opportunities between 1933 and 1943 (App. Br. p. 23). Here, again, appellant overlooks the fact that these controls became necessary for the maximum utilization of manpower in the advancement of the war effort,

and it is noteworthy that the day after the termination of hostilities with Japan was announced all manpower controls were abolished (See Report of John W. Snyder, Director of War Mobilization, New York Times, August 16, 1945, p. 12, col. 3).

b. The Depressed Condition of Real Estate in New York State.

A consideration of the following facts gives clear indication of the difficult real estate situation in New York. Thus it appears that in 1938 the total consideration from real estate sales in the Borough of Manhattan was 79.5% of the assessed valuation, whereas in 1943 the total consideration dropped to 63.7%.* Although the figures compiled by the Real Estate Board of New York show a gradual increase in the number and dollar value of sales from 1938 to 1943, it also appears that there was a gradual decline in the percentage of consideration received as compared with assessed values. And under the New York Constitution (Art. XVI, § 2) and Tax Law § 8, assessments must equal but may not exceed the full value of the property assessed. The decrease in the percentage of sales price to assessed valuations occurred in

*The following table shows the total number of sales, the consideration received and the proportion of the consideration to the assessed valuations in the sale of real estate in the Borough of Manhattan for the years 1938 to 1943 inclusive. The figures were compiled from reports made to the Real Estate Board of New York by the Real Estate Record and Builders' Guide and reprinted in Members' News Bulletin of February, 1945:

Year	*No. of Sales*	*Total Considerations*	*Proportion Total Considerations to Total Assessed Valuations*
1938	2311	$ 98,823,376	79.5%
1939	2693	120,831,337	75.5%
1940	2591	128,645,737	72.6%
1941	2748	149,623,644	65.8%
1942	2417	136,403,378	63.8%
1943	3651	244,994,901	63.7%

spite of the reduction in real property assessments in New York City,* giving strong indication that the increased sales were liquidation disposals in a depressed real estate market.

That the increase in real estate activity was more relative than absolute is further indicated by the testimony of plaintiff's witness Bussing, which showed an increase in 1943 of only 36% over 1933 in the total number of conveyances (R. 48).

In the Borough of Manhattan alone there were 586 foreclosures during 1943, representing total liens of $68,423,739. In addition there were forced surrender sales of 773 parcels representing total liens of $34,807,166. In both instances the quoted amounts were greater than those for the year 1942.** These figures certainly are not

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*The following figures showing the total assessed valuations of all ordinary real estate in New York City from which taxes are collectible are taken from the official figures published by the Tax Department of the City of New York:

Year	*Total Assessed Valuation of Ordinary Real Estate*	*Decrease in Preceding Years Total Assessed Valuations*
1939-40	$14,558,596,052	$ 62,222,294
1940-41	14,417,161,363	141,434,689
1941-42	14,224,025,514	193,135,849
1942-43	14,093,587,819	130,440,195
1943-44	13,927,482,855	166,103,964
1944-45	13,767,145,530	160,349,825

** The following table shows the number of foreclosures and the number of forced surrenders for the years 1941 to 1944 inclusive in the Borough of Manhattan. The figures were taken from the Members' News Bulletin of February, 1945, a monthly publication issued by the Real Estate Board of New York, Inc.:

	Foreclosures		*Surrenders*	
Year	*No.*	*Total Liens*	*No.*	*Total Liens*
1941	515	$88,755,627	450	$31,137,456
1942	540	52,197,416	655	32,537,709
1943	586	68,423,739	773	34,807,166
1944	437	51,761,255	561	25,944,589

indicative of conditions calling for a discontinuance of moratorium legislation.

Another indication of the difficult real estate situation in New York is apparent from the fact that liquidation by the Home Owners Loan Corporation was considerably slower in New York than elsewhere and that more than one-sixth of its foreclosures involve New York properties (App. Br. pp. 67, 68).

Nor is the fact to be overlooked that New York City has been designated as a "defense-rental area" subject to the maximum rental regulations under the Emergency Price Control Act. (Document No. 22704 issued October 8, 1943, by the Office of Price Administration.) And in spite of the substantial increase in cost of almost every commodity and service, it appears from the reports of the United States Bureau of Labor Statistics that rents in New York City have gone up only about 3% since 1935.*

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* The following table, compiled from figures furnished by the United States Bureau of Labor Statistics, appears in the March, 1944 issue of The Industrial Bulletin, published by the New York State Department of Labor, and shows the increase in cost of various items in the United States, New York City and Buffalo between 1935 and 1944:

Item	*Indexes (Average 1935-39=100)*			*Percentage change from February 15, 1943 to February 15, 1944*		
	United States	*New York City*	*Buffalo*	*United States*	*New York City*	*Buffalo*
All items	123.7	124.0	125.0	+2.2	+3.2	
Food	134.5	135.4	134.0	+0.7	+1.5	—3.0
Clothing	134.8	138.6	133.3	+6.8	+9.5	+5.5
Rent	108.1	103.5	114.6	+0.1	+0.3	
Fuel, electricity and ice	110.3	115.2	108.4	+2.9	+4.2	+3.2
House furnishings	128.2	123.7	127.2	+3.3	+4.9	+1.6
Miscellaneous	118.6	119.6	122.7	+4.4	+5.7	+1.3

The Real Estate Board of New York indicated its awareness of the difficulties of the residential property owner when, in a statement issued in response to Mayor LaGuardia's proposal to increase assessed valuations in New York City, it stated (New York Times, Jan. 5, 1945, p. 28, col. 1):

> "Certainly the Mayor is not talking about residential property when he stated that real estate never was more prosperous than it is today."

In the same statement the Board pointed out that market prices for real estate, as shown by open market deals, averaged about 82.9 per cent of the assessed valuations in 1937, 72.6 per cent in 1940 and 63.7 per cent in 1943. The realty group also cited the low percentage of prices to assessed values in the liquidation of bank and insurance company holdings as further arguments against increased assessed valuations (*ibid.*).

c. The "Overhang" of Foreclosed Real Estate.

From the exhibits submitted by the appellant it appears that savings banks in Group V, those located in the Long Island area, including Brooklyn, Queens and Nassau, were the involuntary holders on January 1, 1944, of approximately $21,500,000 of real estate reduced to possession through foreclosures of deeds (Pl. Ex. 5, printed at R. 140, offered at R. 85; Pl. Ex. 6, printed at R. 141, offered at R. 86).

The amount of repossessed real estate held by all lending institutions throughout the State is undoubtedly much greater. The report of the State Superintendent of Banks shows that on October 30, 1943 the net book value of real estate held by banks, trust companies, savings banks and savings and loan associations throughout the State aggre-

gated $183,713,000 (Report of State Superintendent of Banks for 1943).*

The real estate holdings of life insurance companies are even more substantial. As of December 31, 1943, their holdings, exclusive of home office properties, totalled $306,913,342 in appraised market value.** Under the New York Insurance Law § 81 (7), similar to the provisions of the New York Banking Law § 98 (3), insurance companies are prohibited from holding such real estate for a greater period than five years from the date of acquisition by foreclosure or otherwise, unless the time is extended by the Superintendent of Insurance.

There are also the holdings of the Liquidation Bureau of the New York State Department of Insurance. The Superintendent of Insurance reports that as of December 31, 1943, this Bureau had on hand undisposed of real estate with offering prices totalling approximately $12,370,000.00, and unliquidated mortgages totalling $19,325,781.83 (1944 Legislative Document No. 69, pp. 24a-26a).

The foregoing figures show that there was over $500,000,000 worth of real estate held by banks, life insurance companies and the liquidator of defunct mortgage guaranty companies still remaining to be liquidated at approximately

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* The following table of real estate held by lending institutions has been compiled from the annual report of the Superintendent of Banks for the year ending December 31, 1943 (1944 Legislative Document No. 21, pp. 14, 29, 34):

Type of Institutions	*Net Book Value (10-30-43)*	*Net Book Value (10-31-42)*
1. Banks and Trust Companies ...	$ 27,000,000	$ 40,000,000
2. Savings Banks	151,020,000	204,885,000
3. Savings and Loan Associations	5,693,016	9,030,000
	$183,713,016	$253,915,000

** This figure is conpiled from the annual financial reports of life insurance companies on file in the office of the New York State Department of Insurance.

the time of the trial. In addition there are the unliquidated holdings of the Home Owners Loan Corporation, of individual trustees and of private and corporate owners to be considered. As the trial justice pointed out (R. 164), not until the substantial holdings of those unwilling owners are reduced so as to eliminate them as a competitive factor with the real estate of willing sellers, can there be said to exist a normal market.

For at least four years (1934-1937; figures for 1932 and 1933 were not given) mortgage foreclosures had exceeded new loans (R. 98-99, 141, 164). We have seen also that foreclosures continued at a substantial rate long after 1937. Thus it should not be surprising that substantial amounts of foreclosed real estate remained in the hands of lending institutions as late as 1943.

Another factor closely akin to that of the "overhang" of foreclosed real estate is that of the substantial amount of mortgages still protected by the moratorium and not subject to voluntary amortization agreements. Appellant argues that the Legislature should have relied on the good judgment of lending institutions as sufficient assurance that a complete lifting of the moratorium would not result in a flood of new foreclosure actions and load banks and insurance companies with more real estate. Surely the Legislature cannot be criticized, however, for providing appropriate statutory protection against such a result.

Plaintiff's own testimony at the trial showed that approximately one-third of the mortgages held by Brooklyn and Queens savings banks which were executed before 1935, were not being amortized in 1942 (R. 89-90; Pl. Ex. 11, printed at R. 147, offered at R. 88). This meant that over $168,000,000 principal amount of mortgages would become subject to immediate foreclosure in Brooklyn and Queens alone, if there had been an abrupt termination of the mortgage moratorium (see R. 147). Applying the same proportion to the total of approximately four billion

dollars of moratorium-protected mortgages outstanding in 1942 (*ante*, p. 10), we have a total of over one billion dollars which might have been added to the already large total of foreclosed real estate, if the Legislature had followed the course which plaintiff now argues was its only proper course.

Opinions Below

1. *Opinion of the Trial Court (R. 162-165).*

After a brief reference to the nature of the action and the statute involved, the trial judge noted that in spite of the testimony to the effect that the real estate market was active in 1943 and that much foreclosed real estate had been liquidated, the testimony of appellant's own witnesses showed that a substantial amount of "overhang" real estate was still held by savings institutions. In this connection the Court wrote (R. 164; also 182 Misc. at p. 865):

> "There is still to be liquidated, and was at the time of the commencement of this action, a considerable amount of real estate held by savings banks, insurance companies, Home Owners' Loan Corporation and the trustees of estates. Not until the holdings of these unwilling owners of real estate have been reduced, so that they are no longer a factor in competition with the real estate of those who willingly acquired real estate and are willing but not forced to sell, can it be said that there is a normal real estate market."

In view of these circumstances, the trial judge said, the Legislature had the right to determine that there was an abnormal deflation of real property values at the time of the enactment of the 1943 statute. In his opinion an emergency still existed at the time this foreclosure action was instituted and he accordingly granted defendants' motion to dismiss the complaint.

2. *Opinions of the Court of Appeals (R. 169-177).*

a. The Majority Opinion (R. 169-172).

Chief Judge LEHMAN, writing for the majority of the Court (one Judge dissenting), pointed out at the outset that the remedy provided by the original Moratorium Law enacted in 1933 (L. 1933, c. 793) was justified by the extraordinary conditions as set forth in the legislative declaration "and as confirmed by common knowledge." Responsibility for determining when extraordinary conditions exist which threaten the welfare, comfort and safety of the people, he stated, is the Legislature's. And though the legislative choice of a remedy is not conclusive, its findings are entitled to great weight "and the legislative remedy will not be stricken down unless its invalidity is clearly established."

Addressing himself then to the 1943 extension of the Mortgage Moratorium Law, he stated that doubtless many of the adverse conditions resulting in the economic emergency of 1933 had disappeared before 1943; but, he stated (R. 171; also 293 N. Y. at p. 628):

> "The Legislature did not, in 1943, find that these conditions still existed. It found only that the 'serious public emergency' existing in 1933 and '*resulting*' from these conditions, still existed."

After pointing out that it was a matter of common knowledge that in 1943 payrolls and savings banks deposits had increased, he continued (R. 172; also 293 N. Y. at p. 628):

> "On the other hand, an accumulation of past due mortgages resulting from the ten-year-old ban upon actions to foreclose mortgages for default in the payment of principal might reasonably cause apprehension that a flood of foreclosure actions would follow removal of the ban and might itself justify a statute reasonably calculated to stem the impending flood. Reports which legislative committees made to the Legis-

lature in 1938 and 1943 as well as a message of the Governor called to the attention of the Legislature also the fact that abnormal conditions incident to a war economy or resulting from other causes might still constitute a threat 'to the welfare, comfort and safety of the people of the state' and might call for the exercise of the legislative power to provide an extraordinary remedy for extraordinary conditions."

Judge LEHMAN then called attention to the recognized presumption that the Legislature "inquired and found" that there was need for the continuance of the suspension of the right of mortgage holders to foreclose for principal defaults. And after stating that it was entirely immaterial "whether the conditions then existing have created a new emergency," or "resulted in the continuance of an emergency itself created by conditions which have run their course," he added (R. 172; also 293 N. Y. at pp. 628-629):

> "The question which the court must decide is whether the Legislature in the challenged statute has provided an appropriate remedy to tide over an exigency resulting from present conditions. We have said in an analogous case that: 'Whether an emergency exists or not, the test in each case is whether a situation exists which calls for the exercise of the reserved power of the state and whether the remedy adopted by the state is reasonable and legitimate'."

He concluded that the challenged statute met that constitutional test.

b. The Dissenting Opinion (R. 172-177).

Judge LEWIS was the only judge dissenting. After briefly reviewing the testimony as to the improvement in economic conditions over 1933, such as increased employment, wages, bank deposits and the amount of money in circulation, and as to the activity in the real estate market, he reached the conclusion (R. 177; also 293 N. Y.

at p. 633):

> "that the emergency which caused the enactment of the Moratorium Law of 1933 was not 'still existing' on March 11, 1943, when chapter 93 of the Laws of 1943 became a law."

His dissent fails to take into consideration the abnormal factors incident to a war economy and completely disregards the dangers that would flow from the sudden removal of the ban on foreclosure of mortgages which had been accumulating as a result of a ten-year-old restriction and which, as the opinion of the majority noted (p. 628), "might itself justify a statute reasonably calculated to stem the impending flood."

Argument.

Upon the facts outlined above, we shall argue as follows:

1. The validity of moratorium laws as a proper exercise of the state police power can no longer be questioned.
2. Appellant's evidence fails to show that the challenged moratorium statute was without rational basis and the presumption of validity must, therefore, prevail.

POINT I

The validity of moratorium laws as a proper exercise of the State Police power can no longer be questioned.

1. *The Blaisdell decision alone justifies sustaining the New York Moratorium Law.*

We have seen that the challenged statute was based upon a legislative declaration of the existence of an emergency (L. 1943, c. 93, § 1). There is a strong presump-

tion that the Legislature "inquired and found" the necessity for the particular legislation (*Szold* v. *Outlet Embroidery Supply Co.*, 274 N. Y. 271, 278, 8 N. E. (2d) 858, 860 [1937]), that it "understands and correctly appreciates the needs of its own people," and that "its laws are directed to problems made manifest by experience." *Middleton* v. *Texas Power & Light Co.*, 249 U. S. 152, 157 (1919); *Townsend* v. *Yeomans*, 301 U. S. 441, 451 (1937).

In the case at bar, we need not rely solely on presumptions, for the 1943 Legislature had before it the exhaustive report of the Joint Legislative Committee of 1942. This report, which we have previously analyzed, informed the Legislature of conditions in the mortgage field and of economic factors which bore strongly on the moratorium problem. It was there emphasized that because of the rising cost of living and the heavy burden of taxation, the plight of a substantial part of the population was not much better than it had been in 1933. The report pointed to the rent-freezing statutes, the high maintenance and repair costs, the depressed condition of the real estate market, and to the large amount of "overhang" real estate being held by lending and other institutions. In the event of the then sudden termination of the moratorium, it was declared, these factors "might result in a very large amount of forced liquidation of mortgage indebtedness resulting in losses alike to property owners, mortgagees, depositors, and others" (1942 Leg. Doc. No. 45, p. 5). The Committee accordingly found that the emergency in the mortgage field still exists and "that the sudden termination of the moratorium would of itself now create an emergency" (*ibid.*).

So far as material, the statute which the Legislature enacted to cope with the declared emergency, continued the ban on actions for the foreclosure of mortgages executed prior to 1932 where the only default was in the pay-

ment of principal. As long as interest, taxes, assessments and the amortization provided for by the act were paid, the mortgaged property could not be foreclosed. Provision was also made for reaching surplus income and applying it to past due principal.

In spirit and in purpose, the New York statute is similar to the Minnesota mortgage moratorium law which this Court sustained in *Home Building & Loan Ass'n v. Blaisdell*, 290 U. S. 398 (1934). Indeed, the New York statute gives greater protection to the mortgagee than the Minnesota statute did.

The Minnesota law authorized the Court to extend the one-year period of redemption from foreclosure for such time as was deemed equitable, but not beyond a prescribed date. During that period, the mortgagor was to apply the income or rental value of the property to the payment of taxes, insurance, interest and the mortgage indebtedness. Under the New York law, taxes, interest and the amortization required must be paid in full, whereas under the Minnesota statute the only requirement was that the income or reasonable rental value be applied toward the specified charges; and even though that sum was insufficient to meet such carrying charges, the period of redemption could still be extended. In fact, in the *Blaisdell* case, it appeared that during the period of redemption, a $200 deficit had been run up. 290 U. S. at p. 420. There, as here, it was urged that the statute was repugnant to the contract and due process clauses of the Federal constitution, but this Court overruled these contentions and wrote (290 U. S. at pp. 434-435):

> "Not only is the constitutional provision qualified by the measure of control which the State retains over remedial processes, but the State also continues to possess authority to safeguard the vital interests of its people. It does not matter that legislation appropriate to that end 'has the result of modifying or abrogating contracts already in effect.'."

After citing numerous cases (pp. 434-438) where it was held that contracts had to give way to the requirements of public health, safety, morals and general welfare, the Court, in the course of its opinion, emphasized that the "economic interests of the State may justify the exercise of its continuing and dominant protective power notwithstanding interference with contracts" (p. 437).

Answering the argument that the Minnesota law affected contracts directly, whereas in the cases which the Court cited the obligation of the contracts was only incidentally affected, the Court laid down this controlling test (p. 438):

> "The question is not whether the legislative action affects contracts incidentally, or directly or indirectly, but whether the legislation is addressed to a legitimate end and the measures taken are reasonable and appropriate to that end."

The New York 1943 Moratorium Law squarely meets the test of the *Blaisdell* decision. It is addressed to a legitimate end, having as its purpose the protection of the owner and the investor from the chaotic conditions that would inevitably follow from the sudden removal of the ban on foreclosures. The statute is reasonable in its terms and reasonable in its application. Interest (in the case at bar at 6%), taxes, assessments and the unpaid principal at the rate prescribed by the act must be paid. The principal amount of the mortgage debt is not impaired, and the requirement of amortization which, as we have seen, has been increased to 3% in two successive extensions of the law, is a sound method for tapering off the emergency legislation.

2. *The Decision in the Blaisdell Case reaffirms the settled rule that all contracts are subservient to the public welfare.*

The doctrine of the *Blaisdell* case is but a reaffirmation of the established rule that "the interdiction of statutes

impairing the obligation of contracts does not prevent the state from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected." *Manigault* v. *Springs*, 199 U. S. 473, 480 (1905); *Stephenson* v. *Binford*, 287 U. S. 251, 276 (1932); *Union Dry Goods Co.* v. *Georgia Public Service Corp.*, 248 U. S. 372, 375 (1919); *Midland Realty Co.* v. *Kansas City Power & Light Co.*, 300 U. S. 109 (1937); *Norman* v. *Baltimore & Ohio R. Co.*, 294 U. S. 240, 307-308 (1935); *Twentieth Century Associates* v. *Waldman*, 294 N. Y. ....(N. Y. Ct. of App., July 19, 1945 [see Law Rep. News, July 30, 1945, p. 1]).

Thus in the *Stephenson* case, *supra*, for example, it was held that a State, in the exercise of its police power, could change the amount payable under an existing contract for carriage of goods. Conceding that the contracts there involved had been impaired, this Court nevertheless declared (287 U. S. at p. 276):

> "Nor does it matter that the legislation has the result of modifying or abrogating contracts already in effect. Such contracts are to be regarded as having been made subject to the future exercise of the constitutional power of the state."

The statute at bar merely operates as a temporary suspension of a remedy. All the mortgagor's obligations continue, including the payment of statutory amortization, and all that is postponed is the right to foreclose for the nonpayment of the principal amount. Surely if the Legislature may in the exercise of its police power actually alter the amount payable under an existing contract, it may temporarily, in the public interest, postpone the mortgagee's right to foreclose for the mere default in the payment of principal.

3. *Appellant's Authorities Distinguished.*

The cases cited by the appellant (Br. pp. 29, 32) are clearly distinguishable and in no way weaken the force of the principles of the foregoing decisions.

In *Worthen Co.* v. *Thomas*, 292 U. S. 426 (1934) (App. Br. p. 32), a judgment creditor had garnisheed the proceeds of a life insurance policy payable to the defendant as the wife of her deceased husband. Thereafter, the Legislature enacted a law exempting proceeds of life insurance policies from legal process for the satisfaction of any indebtedness existing at the time of the passage of the act. In invalidating the statute the Court pointed out that the legislation was not limited to the emergency and set up no conditions apposite to emergency relief. The unconditional exemption, it was held, constituted an unreasonable interference with the obligations of contracts. Citing the *Blaisdell* case, Chief Justice HUGHES reiterated the familiar principle that "the relief afforded must have reasonable relation to the legitimate end" (p. 433). As we have shown, the statute at bar meets that basic test, and the *Worthen* case is consequently inapplicable.

In the second *Worthen* case relied on by the appellant —*Worthen Co.* v. *Kavanaugh*, 295 U. S. 56 (1935) (App. Br. p. 32)—the statute which was upset gave a mortgagor a minimum of six and one-half years during which there was no enforceable obligation to pay either principal, interest or taxes, or even the rental value of the premises. This was criticized as cutting down the security of a mortgage "without moderation or reason" and "in a spirit of oppression" (p. 60). Clearly, no comparable situation exists in the case at bar.

Finally, in *Barnitz* v. *Beverly*, 163 U. S. 118 (1896) (App. Br. p. 29), it was held (p. 129) that "a statute which authorizes the redemption of property sold upon foreclosure of a mortgage, where no right of redemption

previously existed, or which extends the period of redemption beyond the time formerly allowed, cannot constitutionally apply to a sale under a mortgage executed before its passage." The statute there considered extended the period of redemption unconditionally for a period of eighteen months except when the property had been abandoned or was not occupied in good faith. Although the appointment of a receiver was authorized, the income during the redemption period, except what was necessary for repairs, was still to go to the mortgagor. The differences between that statute and the statute at bar are plainly obvious. Here the limitation on the right to foreclose is hedged about with conditions fully protecting the rights of the mortgagee. As for any broad general principle laid down in that opinion, we submit that it has in effect been overruled by the *Blaisdell* decision.

Moreover, one of the cases principally relied on by the Court in the *Barnitz* case, was *Bronson* v. *Kinzie*, 1 How. 311 (1843), invalidating a State law, passed subsequent to the execution of a mortgage, which provided that the equitable estate of the mortgagor should not be extinguished for twelve months after sale on foreclosure, and further, preventing a sale unless two-thirds of the appraised value of the property should be bid therefor. In view of the decisions of this Court in the *Blaisdell* case, and in the comparatively recent case of *Gelfert* v. *National City Bank*, 313 U. S. 221 (1941), the *Bronson* decision is of very doubtful validity. In fact in the *Gelfert* case, the Court, after referring to the *Bronson* and other cases, stated (313 U. S. at p. 235):

> "Those cases, however, have been confined to the special circumstances there involved. *Home Building & Loan Assn.* v. *Blaisdell, supra,* pp. 431-434. We cannot permit the broad language which those early decisions employed to force legislatures to be blind to the lessons which another century has taught."

4. *Even in the absence of emergency the States have ample power to legislate for the public welfare.*

Irrespective of the existence of an emergency, a State has ample power to pass legislation in the public interest for the purpose of protecting the economic welfare of its people. *Veix* v. *Sixth Ward Ass'n.*, 310 U. S. 32 (1940); and see *Matter of People (Tit. & Mtge. Guar. Co.)*, 264 N.Y. 69, 94; 190 N.E. 153, 161-162 (1934). In the *Veix* case the Court considered a New Jersey statute which radically altered the terms under which withdrawals could be compelled by a member holding shares in a building and loan association. When the plaintiff purchased his shares, the statute permitted him to withdraw upon written notice, and provided that payments were to be made in the order in which requests were made. If payment was not made within six months, the shareholder was permitted to sue for the withdrawal value. Subsequent to plaintiff's purchase, the statute was amended by providing in part that if in any one month available funds were insufficient to pay all requests for withdrawals, withdrawing members were to receive $500 each in the order of priority; further, if the funds were insufficient to pay all matured shares, no withdrawals were to be paid. So long as the funds of the company were applied as specified in the amended statute, no suit could be brought against the company. In sustaining the constitutionality of this law, the Court reiterated the principle of the *Blaisdell* case that all contracts are made subject to paramount authority of the State to "safeguard the vital interests of its people" (p. 38). This authority, it was emphasized, "is not limited to health, morals, and safety" but "extends to economic needs as well" (pp. 38-39). The Court then noted the argument that the cases which established that principle had made repeated reference to an existing emergency at the time of their enactment, whereas in the case then under review it was considering permanent legislation.

Answering the question whether that was a significant factor in the consideration of the contract clause, the Court said (310 U. S. at p. 39):

> "We think not. 'Emergency does not create [constitutional] power, emergency may furnish the occasion for the exercise of power.' We think of emergencies as suddenly arising and quickly passing. The emergency of the Depression may have caused the 1932 legislation, but the weakness in the financial system brought to light by that emergency remains. If the legislature could enact the legislation as to withdrawals to protect the associations in that emergency, we see no reason why the new status should not continue."

In the case at bar, we need not go as far as the *Veix* decision. The question as to the right to bring suit on the bond is not involved in this appeal, and the only point presented is the power to suspend the equitable remedy of foreclosure for a prescribed period. Whether conditions in 1943 would have justified the enactment of permanent legislation to cope with the mortgage problem is of course not before the Court, for the Legislature at that time merely saw fit to re-enact the Moratorium Law for an additional year. But in this connection it is well to bear in mind that emergencies do not always "evaporate" (see *Faitoute Co.* v. *Asbury Park*, 316 U. S. 502, 512 [1942]), and conditions brought to light in an emergency may warrant remedial legislation of a permanent nature (*Veix* v. *Sixth Ward Ass'n, supra*, 310 U. S. at p. 39). If a State may validly enact permanent legislation with respect to payments by building and loan associations in a manner which unquestionably alters the terms of pre-existing contracts on the theory that these institutions are important to its economy, it certainly has like power to deal with threatened foreclosures in the mortgage field which affect the interests, and in many instances the life's savings of thousands of home owners. This is particularly so when

the interests of the mortgagee are adequately protected and, in addition to getting a fair return on his investment, the principal indebtedness remains unimpaired.

It is also worth emphasizing that building and loan transactions are usually regarded as short term matters with the right of withdrawal on short notice. Mortgages on the other hand are long term investments, lacking the fluidity of the former type of transaction.

The argument (App. Br. p. 15) that a property owner who "has no real equity" to protect should not be perpetuated in his ownership is devoid of merit. For if the owner is willing to pay interest at 6%, taxes, insurance and statutory amortization (now 3%), and to maintain the property in repair in order to preserve his ownership, it hardly lies in the mouth of a lending institution to assert that the owner has no equity to protect, or that the banks should be given unrestricted freedom to decide when it is more profitable to foreclose than to continue receiving interest and amortization.

In summary we again note the facts that the so-called improved economic conditions were due in large part to war activity; that the plight of a major portion of the population had not materially improved; and that the ten-year old ban on foreclosures had brought in its wake new problems which call for appropriate remedies. We consequently find no validity to the claim that the 1943 legislation is an attempt to prefer "a favored group" (App. Br. p. 32). There is no basis for such assertion. The statute is a most reasonable method of tapering off the emergency legislation and, we submit, falls squarely within the rule that legislation which has a reasonable relation to a legitimate end is not repugnant to constitutional prohibitions.

POINT II

Appellant's evidence fails to show that the challenged moratorium statute was without rational basis, and the presumption of validity must therefore prevail.

1. *The Presumption of Constitutionality.*

The principle is deeply rooted that every possible presumption is in favor of the validity of a statute and "though the court may hold views inconsistent with the wisdom of the law, it may not be annulled unless palpably in excess of legislative power." *Nebbia* v. *New York*, 291 U. S. 502, 538 (1934); *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152 (1938); *Alaska Packers Ass'n* v. *Industrial Accident Commission*, 294 U. S. 532, 543 (1935); *McLean* v. *Arkansas*, 211 U. S. 539, 547 (1909); *Davis* v. *Department of Labor*, 317 U. S. 249, 257-258 (1942); *Sinking-Fund Cases*, 99 U. S. 700, 718 (1878). As this Court said in *McLean* v. *Arkansas*, *supra* (211 U. S. at p. 547):

> "The legislature being familiar with local conditions is, primarily, the judge of the necessity of such enactments. The mere fact that a court may differ with the legislature in its views of public policy, or that judges may hold views inconsistent with the propriety of the legislation in question, affords no ground for judicial interference, unless the act in question is unmistakably and palpably in excess of legislative power."

A statute consequently will not be overthrown unless its unconstitutionality is established beyond a reasonable doubt (*Sinking-Fund Cases*, *supra*, 99 U. S. 700, 718), and the burden rests upon him who asserts the invalidity of a legislative enactment. *Metropolitan Casualty Ins. Co.* v. *Brownell*, 294 U. S. 580, 584 (1935); *Erie R. R. Co.* v. *Williams*, 233 U. S. 685, 699 (1914).

With these basic principles in mind, we briefly examine the testimony adduced by the appellant, against the back-

ground of facts contained in the Janes Committee Report as well as commonly known facts, for the purpose of demonstrating that appellant has wholly failed to establish the invalidity of the statute.

2. *Appellant's proof is inadequate to establish the claim of unconstitutionality; at most, it has created a debatable question as to the necessity for the legislation and the legislative choice is therefore conclusive.*

Appellant's testimony may be summarized as showing an increase in bank deposits (R. 37-38), money in circulation (R. 40-41), purchases of war bonds (R. 41-42), and in salaries and number of wage earners (R. 42-43). There was also testimony that the real estate market in 1943 was active and that mortgage money was available provided the underlying security was good and the location of the property satisfactory (R. 103-104, 108).

The foregoing testimony must be considered in the light of the findings set forth in the Janes Committee Report (1942 Leg. Doc. No. 45), and in the light of the facts of common knowledge. Thus, appellant's proof must be weighed against the fact that there has been a tremendous rise in the cost of living; that less than one-tenth of the State's population and less than one-sixth of its wage earners had benefited directly by the improvement in employment and in factory wages; that the plight of people with fixed incomes is almost as great as it was in 1933; that the cost of maintenance and repairs has mounted considerably; that in many instances the economic condition of the family had become more difficult because the breadwinner was in the service of his Country; and that the large amount of "overhang" real estate held by banks and other institutions constitutes a continuing threat to the real estate market.

It should also be noted that appellant's own witness testified that a good part of the improvement in the real

estate market was due to new construction and to the guarantee of loans on new residences by the Federal Housing Administration (R. 109, 111). These factors, as we have pointed out, played no part at all in aiding moratorium protected properties, all of which had been constructed prior to 1932.

We have also seen that in the years 1941-1944 foreclosures and forced surrenders still continued in large numbers (see footnote *ante*, p. 21), and that in 1943 the ratio of consideration received on property sold in the Borough of Manhattan as compared with assessed valuations, was only 63.7%, despite the decrease in tax assessments in New York City (see footnotes *ante*, pp. 20 and 21).

As previously noted, the Real Estate Board of New York, in opposing Mayor LaGuardia's proposal for increased assessed valuation, stated that the "Mayor is not talking about residential property when he stated that real estate never was more prosperous than it is today" (New York Times, January 5, 1945, p. 28, col. 1).

Further indication of the difficult real estate problem in New York appears from the fact that more than one-sixth of the foreclosures by the Home Owners Loan Corporation involved New York properties, and liquidation of properties in New York was considerably slower than elsewhere. Whereas foreclosures in the nation involved less than twenty per cent of the 1,017,821 original loans,* in New York State the figure was forty-two per cent. These foreclosures and subsequent resales in New York resulted in losses running into millions of dollars (see App. Br. pp. 67-68).

It was on the basis of these and other facts which we have previously set forth that the Janes Committee

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* The word "loans" is undoubtedly intended, although printed as "losses" in appellant's brief, page 68. (See New York Times, March 18, 1945, sec. 1, p. 34, col. 3.)

concluded that any sudden removal of the restriction on foreclosures would demoralize the mortgage market and result in substantial losses not only to the owners but to mortgagees as well.

We submit that recitals in the original enactment of the 1933 mortgage moratorium of abnormal obstructions in economic and financial processes are in a substantial sense still valid. The war-stimulated activity was not a natural or ordinary process of economic life. As late as 1940, according to the estimate of the American Federation of Labor, there were still 9,104,000 unemployed.* The temporary absorption of a large number of these unemployed upon our entry into the war was of course not a permanent solution of the difficult problem of unemployment. The so-called improvement in economic conditions was due, in the major part, to the war effort, and the termination of hostilities has already brought in its wake a host of difficult and challenging problems. The Director of War Mobilization and Reconversion in his Report to the President of August 15, 1945, estimated that the total number of unemployed was expected to rise to 5,000,000 or more within three months, and to 8,000,000 before next spring (Report of John W. Snyder, Director of War Mobilization and Reconversion, as reported in the New York Times, August 16, 1945, p. 12).

Also of significance in considering the 1943 statute (the only one directly involved in this case), is the fact that the Legislature found it necessary to re-enact the moratorium legislation in 1944 and 1945. The 1945 re-enact-

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* The estimate of 9,104,000 is taken from a table compiled by the American Federation of Labor appearing at page 25 of the August, 1941, issue of the American Federationist, the official magazine of the American Federation of Labor. This figure is also confirmed in an article appearing in the April, 1943, issue of the Survey of Current Business (pp. 10, 16), published by the Department of Commerce, wherein it is estimated that the number of unemployed in 1940 was 8,900,000.

ment was made after a joint legislative committee on mortgage and real estate had held a public hearing and had rendered a report in which it stated that it found "much evidence of a continued emergency." Certainly, conditions in 1945 are not much different from those in 1943, and the very need for the continuance of the legislation up to this time emphasizes the necessity for the 1943 enactment.

In the light of the foregoing facts it may not be said that the legislative effort to cope with the mortgage problem was without rational basis. On the contrary, we submit that the Act is an appropriate means of dealing with a danger which the legislature on adequate grounds had reason to apprehend. The protection of thousands of home owners, which is the primary purpose of the moratorium law, from catastrophic results that might follow from unrestricted foreclosures, is clearly within the legitimate sphere of the State's police power. The existence of reasonable grounds for belief that these evils might occur is sufficient to sustain the legislative action even though there be an "earnest conflict of serious opinion" on the subject. *Erie R. R. Co.* v. *Williams*, 233 U. S. 685, 699 (1914).

"Our present duty is to pass upon the statute before us, and if it has been enacted upon a belief of evils that is not arbitrary we cannot measure their extent against the estimate of the legislature." *Tanner* v. *Little*, 240 U. S. 369, 385 (1916). For the courts are not concerned with the wisdom or the propriety of the legislative action, but only with the question whether it lacks any reasonable basis to support it. *South Carolina State Highway Dep't* v. *Barnwell Bros.*, 303 U. S. 177, 191-192 (1938); *Carmichael* v. *Southern Coal Co.*, 301 U. S. 495, 510 (1937); *Norman* v. *Baltimore & Ohio R. Co.*, 294 U. S. 240, 311 (1935); *Nebbia* v. *New York*, 291 U. S. 502, 537 (1934). As this Court said in *South Carolina State*

Highway Department v. *Barnwell Bros., supra* (303 U. S. at pp. 191-192):

> "Being a legislative judgment it is presumed to be supported by facts known to the legislature unless facts judicially known or proved *preclude* that possibility. Hence, in reviewing the present determination we examine the record, not to see whether the findings of the court below are supported by evidence, but to ascertain upon the whole record whether it is possible to say that the legislative choice is without rational basis." (Italics ours.)

So, too, in *Carmichael* v. *Southern Coal Co., supra,* the Court, in discussing the limitation on the judicial function in passing upon the constitutionality of statutes, wrote (301 U. S. at p. 510):

> "A state legislature, in the enactment of laws, has the widest possible latitude within the limits of the Constitution. In the nature of the case it cannot record a complete catalogue of the considerations which move its members to enact laws. In the absence of such a record courts cannot assume that its action is capricious, or that, with its informed acquaintance with local conditions to which the legislation is to be applied, it was not aware of facts which afford reasonable basis for its action."

The Court added (*ibid.*):

> "Only by faithful adherence to this guiding principle of judicial review of legislation is it possible to preserve to the legislative branch its rightful independence and its ability to function."

In the case at bar, the facts in the Janes Committee Report, as well as facts of common knowledge, afford ample support for the legislative action.

The existence of honest differences of opinion or debatable questions as to the wisdom or propriety of the statute furnishes no ground for striking down a legislative enact-

ment, and the legislative choice, under such circumstances, is binding on the courts.* *Old Dearborn Distributing Co.* v. *Seagram-Distillers Corp.*, 299 U. S. 183, 196 (1936); *Standard Oil Co.* v. *Marysville*, 279 U. S. 582, 586 (1929); *Sproles* v. *Binford*, 286 U. S. 374 (1932); *Hebe Co.* v. *Shaw*, 248 U. S. 297, 303 (1919); *Zahn* v. *Board of Public Works*, 274 U. S. 325, 328 (1927).

The applicable rule, where the legislative determination is based upon questions which are fairly debatable, was succinctly set forth in *Old Dearborn Distributing Co.* v. *Seagram-Distillers Corp.*, *supra*, where the Court wrote (299 U. S. at p. 196):

> "Where the question of what the facts establish is a fairly-debatable one, we accept and carry into effect the opinion of the legislature."

With equal clarity and pungency Mr. Justice Stone in *Standard Oil Co.* v. *Marysville*, *supra*, declared (279 U. S. at p. 584):

> "We need not labor the point, long settled, that where legislative action is within the scope of the police power, fairly debatable questions as to its reasonableness, wisdom and propriety are not for the determination of courts, but for that of the legislative body on which rests the duty and responsibility of decision."

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* The existence of an honest dispute as to just what the real estate situation is in New York is illustrated by the recent decision of the Emergency Court of Appeals in *315 West 97th Street Realty Co., Inc., et al.* v. *Bowles*, Vol. 5, C. C. H. (Price Control Cases), pages 54,701 *et seq.* Although the Emergency Court found that the operating income of owners of apartments in the sub-standard group has been reduced by more than 25% since 1939, it nevertheless upheld the rental ceilings on all property, except as to the so-called luxury apartments. With respect to the luxury apartments, it directed an increase over the base rate, but upon application by the Price Administrator the judgment was subsequently vacated and permission was granted to the Administrator to introduce additional evidence.

The holding in *Chastleton Corp.* v. *Sinclair*, 264 U. S. 543 (1924), is not in conflict with the foregoing principles. There it was merely held that plaintiff's allegations that an emergency no longer existed could not be declared "offhand to be unmaintainable" (p. 548). But that decision does not justify the substitution by a court of its judgment for that of the legislature, particularly where the legislative finding is the result of an investigation and is based on reasonable grounds. The principle has received repeated recognition by this court, as is abundantly illustrated by the cases we have cited.

Moreover, in the case at bar, the highest court in the State has sustained the legislative finding. That interpretation is entitled to respect and is to be accepted unless "clearly without ground." See *Union Lime Company* v. *Chicago & N. W. Ry. Co.*, 233 U. S. 211, 218 (1914); *Jones* v. *City of Portland*, 245 U. S. 217, 221 (1917); *Hairston* v. *Danville & Western Ry.*, 208 U. S. 598, 607 (1908). For where State courts have determined the factual question as to the existence of an emergency, that determination should not lightly be overturned. *Cf. Bodkin* v. *Edwards*, 255 U. S. 221, 223 (1921); *Thomas* v. *Kansas City Southern Ry. Co.*, 261 U. S. 481, 484 (1923); *Page* v. *Rogers*, 211 U. S. 575, 577 (1909); *Akins* v. *Texas*, 324 U. S. . . . , 65 Sup. Ct. 1276, 1278 (1945).

In the recent case of *Akins* v. *Texas*, *supra*, 65 Sup. Ct. at p. 1278, this Court stated that, even though it has a duty of making independent review of the facts where questions under the Fourteenth Amendment are involved, it gives great respect to the conclusions of the State courts and will accept a finding on disputed issues "unless it is so lacking in support in the evidence that to give it effect would work that fundamental unfairness which is at war with due process," citing *Lisenba* v. *California*, 314 U. S. 219, 238 (1941).

The factual conclusions of a State court on a due process question relating to property rights should be entitled to at least as much weight as similar conclusions in a criminal case.

3. *It is of no significance whether the emergency is the result of new or old conditions.*

It is argued that the statute under attack can only be sustained on the ground that the 1933 emergency has continued and not on the basis of any new emergency that may have arisen (App. Br. pp. 33-36). There is no validity to this contention.

Many of the factors which justified the 1933 legislation (see *ante*, pp. 7-8) were prevalent in 1943, and are still valid today. Moreover we think it quite unimportant, as Judge LEHMAN pointed out, whether the conditions in 1943 "have created a new emergency" or have "resulted in the continuance of an emergency itself created by conditions which have run their course" (293 N. Y. at p. 628). The question rather, is whether the challenged legislation provides "an appropriate remedy to tide over an exigency resulting from present conditions" (*ibid.*).

An argument somewhat similar to that here advanced by the appellant was made in *Biddles* v. *Enright*, 239 N. Y. 354, 146 N. E. 625 (1925), where it was urged that reasons assigned for the original passage of an act must be adhered to and that no other reasons or conditions, however good or sufficient to make it constitutional, may be considered. Answering that contention, the New York Court of Appeals aptly said (239 N. Y. at p. 361):

> "New conditions may sustain the same reason, or, to be more accurate, reasoning from new conditions and new premises may bring us to the same result."

Whether the legislation was required because of the continuance of an emergency or because new conditions

had brought about the need for remedial legislation is wholly immaterial. The basic test, as this Court has said, where the legislative judgment is challenged, is "whether any state of facts either known or which could reasonably be assumed affords support for it." *United States* v. *Carolene Products Co.*, 304 U. S. 144, 154 (1938).

4. *The action of other states in dealing with their mortgage problems is of no relevance here.*

The fact that mortgage moratorium legislation no longer exists in 24 out of 25 states that originally enacted such laws, is of no relevance to the problem here presented. The local problems of each state are not the same. The very fact that 23 states never found the need for enacting moratorium laws is in itself indicative of the variance of the problems which confront the respective states. It would be a feeble argument that because those states never enacted any moratorium legislation, there was no need for it elsewhere. We need but refer to the decision of this Court in the *Blaisdell* case upholding the Minnesota Mortgage Moratorium Law to show the fallacy of any such contention.

Likewise it is immaterial that other states saw fit not to continue the moratorium legislation. The varying problems and conditions in each state are a matter which has received judicial recognition. See *Hairston* v. *Danville & Western Ry.*, 208 U. S. 598, 607 (1908); *Jones* v. *City of Portland*, 245 U. S. 217, 221 (1917).

It has been estimated that the national mortgage debt amounted to approximately $35,000,000,000 (35-billions) in 1932. CLARK, *The Internal Debts of the United States* (Twentieth Century Fund, 1933), p. 5. The answers of the 1121 out of 1758 lending institutions to whom the Janes Committee sent questionnaires, showed that these institutions alone owned mortgages in New York State

amounting to over five billion dollars which were dated prior to July 1, 1932. (Janes Committee Report, 1942 Leg. Doc. No. 45, pp. 12, 15.) Considering the holdings of the institutions who failed to answer and those of private parties, it is fair to assume that the entire mortgage indebtedness in New York State in 1932 was about 25% of the nation-wide total. New York's problem was evidently greater both relatively and absolutely than that of other states.

The Home Owners Loan Corporation sustained losses in New York State running into many millions on foreclosures and subsequent resales. Liquidation of advances made in New York on dwellings was considerably slower than elsewhere in the nation (see App. Br. pp. 67-68).

Appellant urges that the necessity for federal rent control and the enactment by New York State of statutes regulating rentals for business property is indicative of the prosperous nature of real estate. One of the prime purposes of both federal rent control and of the New York statutes regulating rentals for business premises was the prevention of inflation. Further, the New York statutes regulating rentals of business property (L. 1945, c. 3, as amended by c. 315 and c. 314), have little relation to the problem at hand. These statutes were enacted to prevent rent gouging and interference with the war effort. It is a fact of common knowledge that the persons most affected by the mortgage moratorium are owners of one and two family homes and not owners of commercial space.

Nor do we find any significance in the fact that some states have declared their mortgage moratorium laws unconstitutional. Of the six states cited in appellant's brief (p. 24)—Iowa, Mississippi, Arizona, Nebraska, Kansas and Texas—the Courts in the last two mentioned states did not declare the moratorium law invalid on the basis

of a finding that the emergency had terminated. Thus in the Kansas case—*Farm Mortgage Holding Co.* v. *Miller*, 143 Kan. 790, 57 P. (2d) 35 (1936), the Court followed its previous decision in *Kansas City Life Ins. Co.* v. *Anthony*, 142 Kan. 670, 52 P. (2d) 1208 (1935), where it was held that where a judgment of foreclosure had been entered prior to the enactment of the moratorium statute, the Court had no power to extend the period of redemption. This decision was predicated on the theory that the previously entered judgment could not be annulled by subsequent legislation "even on the theory of the existence of an emergency."

In *Travelers Ins. Co.* v. *Marshall*, 124 Tex. 45, 76 S. W. (2d) 1007 (1934), the Texas Court held that it was not obliged to follow the *Blaisdell* decision on the ground that that case could not control the state constitutional provision which, in terms similar to Art. 1, § 10 of the Federal Constitution, prohibits the state from impairing the obligation of contracts, and that no moratory legislation even under emergency conditions could be enacted in the state. The correctness of that holding is open to serious question. Cf. *People* v. *Defore*, 242 N. Y. 13, 20, 150 N. E. 585, 587 (1926), cert. den. 270 U. S. 657 (1925); *People* v. *Reiss*, 255 App. Div. 509, 510, 8 N. Y. S. (2d) 209, 211 (1st Dept. 1938), aff'd, 280 N. Y. 539, 20 N. E. (2d) 8 (1939).

Moreover all the six states referred to are primarily either agricultural or cattle states, which do not have the same problems as New York. It appears from the decision in *First Trust Company of Lincoln* v. *Smith*, 134 Neb. 84, 277 N. W. 762 (1938) (App. Br. p. 24), that the court was greatly impressed by the vast amount of governmental financial assistance accorded farm owners by the Federal Land Banks. These banks were empowered to lend farmers 75 per cent of the normal value of their

land at interest rates of 4½ per cent for the first five years and 5 per cent thereafter, with no amortization of principal during the first 5 year period. Mortgage loans to farmers by this agency aggregated more than 2½ billion dollars. Unquestionably, these factual considerations played a large part in the determination of all those cases.

Further, the statute invalidated by the Nebraska Court was substantially different from the statute at bar. There was no requirement under the Nebraska Act that interest, taxes or amortization be paid. While the court was permitted to fix a monthly rental, it appeared in that case that after the application of all moratorium rentals collected, there remained unpaid taxes amounting to $1600 over a seven year period.

We submit that neither the facts adduced nor the arguments advanced, furnish any justifiable basis for invalidating the New York statute presently challenged. In the words of Chief Justice STONE (then an Associate Justice) in *Alaska Packers Ass'n* v. *Industrial Accident Commission*, 294 U. S. 532, 543 (1935):

> "Indulging the presumption of constitutionality which attaches to every state statute, we cannot say that this one, as applied, lacks a rational basis or involved any arbitrary or unreasonable exercise of state power."

Conclusion

We have demonstrated that on the basis of facts which were commonly known, and on the basis of the report of its Joint Legislative Committee, the action of the New York Legislature in enacting the 1943 statute was neither arbitrary nor capricious, but was based upon reasonable grounds; and that the remedy evolved was an appropriate

means of dealing with the declared emergency. Appellant's proof, at best, merely shows that reasonable men might perhaps differ as to the necessity for the 1943 enactment. But "within the field where men of reason may reasonably differ, the legislature must have its way." (CARDOZO, J., in *Williams* v. *Mayor*, 289 U. S. 36, 42 [1933].)

The judgment appealed from should be affirmed.

September 27, 1945.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 62.—October Term, 1945.

The East New York Savings Bank, Appellant, *vs.* Alvin Hahn and Hannah Hahn.	Appeal from the Supreme Court of the State of New York, County of Kings.

[November 5, 1945.]

Mr. Justice Frankfurter delivered the opinion of the Court.

This was an action begun in 1944 to foreclose a mortgage on real property in the City of New York for non-payment of principal that had become due in 1924. The trial court held that the foreclosure proceeding was barred by the applicable New York Moratorium Law. 182 Misc. (N. Y.) 863. This Law, Chapter 93 of the Laws of New York of 1943, extended for another year legislation first enacted in 1933, whereby the right of foreclosure for default in the payment of principal was suspended for a year as to mortgages executed prior to July 1, 1932.[1] Year by year (except in 1941 when an extension for two years was made), the 1933 statute was renewed for another year. The New York Court of Appeals, one judge dissenting, affirmed the trial court's judgment. 293 N. Y. 622. Upon claim duly made below that the Moratorium Law of 1943 was repugnant to the Contract Clause of the Constitution of the United States, Art. I, §10, the case is here on appeal under § 237(a) of the Judicial Code, 28 U. S. C. § 334(b). The validity of the statute is likewise challenged under the Fourteenth Amendment but too feebly to merit consideration.

Since *Home Bldg. & L. Assn.* v. *Blaisdell*, 290 U. S. 398, there are left hardly any open spaces of controversy concerning the constitutional restrictions of the Contract Clause upon moratory legislation referable to the Depression. The comprehensive opinion of Mr. Chief Justice Hughes in that case cut beneath the

[1] The 1943 Moratorium Law made the payment of interest, taxes, insurance, and amortization charges a prerequisite to suspension of foreclosure. These conditions concededly were met and the only default here was in unpaid principal.

skin of words to the core of meaning. After a full review of the whole course of decisions expounding the Contract Clause—covering almost the life of this Court—the Chief Justice, drawing on the early insight of Mr. Justice Johnson[2] in *Ogden* v. *Saunders*, 12 Wheat. 213, 286, as reinforced by later decisions cast in more modern terms, *e. g.*, *Manigault* v. *Springs*, 199 U. S. 473, 480; *Marcus Brown Co.* v. *Feldman*, 256 U. S. 170, 198, put the Clause in its proper perspective in our constitutional framework. The *Blaisdell* case and decisions rendered since (*e. g.*, *Honeyman* v. *Jacobs*, 306 U. S. 539; *Veix* v. *Sixth Ward Assn.*, 310 U. S. 32; *Gelfert* v. *National City Bank*, 313 U. S. 221; *Faitoute Co.* v. *Asbury Park*, 316 U. S. 502), yield this governing constitutional principle: when a widely diffused public interest has become enmeshed in a network of multitudinous private arrangements, the authority of the State "to safeguard the vital interests of its people", 290 U. S. at 434, is not to be gainsaid by abstracting one such arrangement from its public context and treating it as though it were an isolated private contract constitutionally immune from impairment.

The formal mode of reasoning by means of which this "protective power of the State", 290 U. S. at 440, is acknowledged is of little moment. It may be treated as an implied condition of every contract and, as such, as much part of the contract as though it were written into it, whereby the State's exercise of its power enforces, and does not impair, a contract. A more candid statement is to recognize, as was said in *Manigault* v. *Springs*, *supra*, that the power "which in its various ramifications is known as the police power, is an exercise of the sovereign right of the Government to protect the . . . general welfare of the people, and is paramount to any rights under contracts between individuals." 199 U. S. at 480. Once we are in this domain of the reserve power of a State we must respect the "wide discretion on the part of the legislature in determining what is and what is not necessary". *Ibid.* So far as the

[2] For Mr. Justice Johnson's constitutional views regarding the scope and limits of the Contract Clause, see Morgan, *Mr. Justice William Johnson and the Constitution* (1944) 57 Harv. L. Rev. 328, 352 *et seq.*, and Hale, *The Supreme Court and the Contract Clause: III* (1944) 57 Harv. L. Rev. 852, 872, *et seq.* See also Levin, *Mr. Justice William Johnson and the Unenviable Dilemma* (1944) 42 Mich. L. Rev. 803; *Mr. Justice William Johnson, Creative Dissenter* (1944) 43 Mich L. Rev. 497; *Mr. Justice William Johnson and the Common Incidents of Life* (1945) 44 Mich. L. Rev. 59.

constitutional issue is concerned, "the power of the State when otherwise justified", *Marcus Brown Co.* v. *Feldman*, 256 U. S. 170, 198, is not diminished because a private contract may be affected.

Applying these considerations to the immediate situation brings us to a quick conclusion. In 1933, New York began a series of moratory enactments to counteract the virulent effects of the Depression upon New York realty which have been spread too often upon the records of this Court to require even a summary. Chapter 793 of the Laws of 1933 gave a year's grace against foreclosures of mortgages, but it obligated the mortgagor to pay taxes, insurance, and interest. The validity of the statute was sustained in *Klinke* v. *Samuels*, 264 N. Y. 144. The moratorium has been extended from year to year. When the 1937 reenactment was questioned, the New York Court of Appeals again upheld the legislation. *McGuire & Co.* v. *Lent & Lent, Inc.*, 277 N. Y. 694. This decision was rendered after a joint legislative committee had made a thorough study and recommended continuance of the moratorium. New York Legislative Document (1938) No. 58. In 1941, the Legislature reflected some changes in economic conditions by requiring amortization of the principal at the rate of 1% per annum, beginning with July 1, 1942. The same legislature established another joint legislative committee to review once more the New York mortgage situation. "After a most exhaustive study of the moratorium", a report was submitted recommending its extension for another year. New York Legislative Document (1942) No. 45. The Governor of New York urged such legislation (New York Legislative Document (1943) No. 1, p. 9) and the Law now under attack was enacted. It is relevant to note that the New York Legislature in subsequent extensions of the moratorium again took note of changed economic conditions by increasing the amortization rate to 2% in 1944 (L. 1944, C. 562) and to 3% in 1945 (L. 1945, C. 378).

Appellant asks us to reject the judgment of the joint legislative committee, of the Governor, and of the Legislature, that the public welfare, in the circumstances of New York conditions, requires the suspension of mortgage foreclosures for another year. On the basis of expert opinion, documentary evidence, and economic arguments of which we are to take judicial notice, it urges such a change in economic and financial affairs in New York as to deprive of all justification the determination of New York's legisla-

ture of what New York's welfare requires. We are invited to assess not only the range and incidence of what are claimed to be determining economic conditions insofar as they affect the mortgage market—bank deposits and war savings bonds; increased payrolls and store sales; available mortgage money and rise in real estate values—but also to resolve controversy as to the causes and continuity of such improvements, namely the effect of the war and of its termination, and similar matters. Merely to enumerate the elements that have to be considered shows that the place for determining their weight and their significance is the legislature not the judiciary. Unlike *Worthen Co.* v. *Kavanaugh*, 295 U. S. 56, 60, here there was no "studied indifference to the interests of the mortagee or to his appropriate protection". Here the Legislature was not even acting merely upon the pooled general knowledge of its members. The whole course of the New York moratorium legislation shows the empiric process of legislation at its fairest: frequent reconsideration, intensive study of the consequences of what has been done, readjustment to changing conditions, and safeguarding the future on the basis of responsible forecasts. The New York Legislature was advised by those having special responsibility to inform it that "the sudden termination of the legislation which has dammed up normal liquidation of these mortgages for more than eight years might well result in an emergency more acute than that which the original legislation was intended to alleviate." New York Legislative Document (1942) No. 45, p. 25. It would indeed be strange if there were anything in the Constitution of the United States which denied the State the power to safeguard its people against such dangers. There is nothing. Justification for the 1943 enactment is not negatived because the factors that induced and constitutionally supported its enactment were different from those which induced and supported the moratorium statute of 1933.

It only remains to say that in *Chastleton Corp.* v. *Sinclair*, 264 U. S. 543, which was strongly pressed on us, the Court dealt with quite a different situation. The differentiating factors are too glaring to require exposition.

Judgment affirmed.

Mr. Justice RUTLEDGE concurs in the result.

Mr. Justice JACKSON took no part in the consideration or decision of this case.